

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

OPELTON KELLEY,

Plaintiff,

v.

Case No. 2:06-cv-211
HON. GORDON J. QUIST

JOANIE HINSA, et al.,

Defendants.

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**OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on July 23, 2007. The Report and Recommendation was duly served on the parties. The Court has received objections from Plaintiff and from Defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Contrary to Plaintiff's assertion, Defendants Hinsa and Gollinger are entitled to dismissal from this action because they were not personally involved in the opening or processing of Plaintiff's legal mail. Similarly, Plaintiff has failed to support an access to the court claim.

Defendants argue that they reasonably relied upon the post September 11 policy in processing Plaintiff's mail. The Sixth Circuit held in a factually similar case that prisoner plaintiffs' clearly established rights were violated when their legal mail was opened outside their presence on December 14, 2003. *Thompson v. Caruso*, No. 05-2881 (6th Cir. Oct. 10, 2006) (unpublished opinion). In that case, the Sixth Circuit reversed the dismissal of the complaint that was based on

the same arguments that Defendants assert in these objections. Defendants' arguments have been rejected by the Sixth Circuit.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #54) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion For Dismissal and/or Summary Judgment (Docket #30) is granted in part and denied in part. Defendants' motion is denied as to Plaintiff's First Amendment claims involving mail items 2, 6, 10, 11, 12 and 13. Defendants' motion is granted as to Plaintiff's First Amendment claims involving the remaining mail items, Plaintiff's access to courts claims, and Plaintiff's attorney client privilege claims.

IT IS FURTHER ORDERED that Defendants Hinsa and Gollinger are DISMISSED from this action for lack of personal involvement.

Dated: September 25, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE